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in Developing Countries

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PROGRESS REPORT BY THE SECRETARIAT ON THE IMPLEMENTATION OF THE WORK PROGRAMME OF THE STANDING COMMITTEE

Prepared by the UNCTAD secretariat

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INTRODUCTION

1. On the basis of the Board decision 398 (XXXVIII) annex B, which sets out the terms of reference of the Standing Committee on Developing Service Sectors: Fostering Competitive Service Sectors in Developing Countries, the Standing Committee agreed at its first session (26-30 October 1992) upon its work programme for the period up to the next session of the Conference.

2. The second (pre-sessional) executive session of the Trade and Development Board approved the provisional agenda for the second session of the Standing Committee (TD/B/CN.4/21), which was intended to initiate work on selected items from the work programme, namely: (i) development of a conceptual framework for the collection and compilation of internationally comparable statistics; (ii) the collection and dissemination of information on measures, including laws and regulations, affecting the access of services and service suppliers to world markets, including consideration of the possibility of a computerized database; (iii) a comparative analysis of services sectors in developing countries; (iv) the impact of subsidies on trade in services, especially on the exports of developing countries; (v) temporary movement of persons as service suppliers; (vi) analysis of on-going processes of recognition and harmonization of qualifications; and (vii) regional, subregional and interregional cooperation on services.

3. This document, envisaged under item 3 of the provisional agenda, reports the progress achieved in the preliminary phase of work on each of these items. It has been prepared with a view to facilitating the work of the Standing Committee as well as to seeking its guidance with respect to continued work on these items and how best to address other items in the work programme.[1]

I. CONCEPTUAL FRAMEWORK FOR STATISTICS ON TRADE IN SERVICES

4. Under item 2 (a) of the work programme, the Standing Committee will ***develop a conceptual framework for the collection and compilation of internationally comparable statistics on all modes of delivery, in particular with regard to commercial presence and movement of natural persons, as well as contributing to the improvement of the CPC in order to adapt it to the specific needs of international trade in services.***[2]

5. In order to initiate the Standing Committee's work under this item, the secretariat has prepared a background paper (UNCTAD/SDD/SER/1) intended to

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[1] Items in the work programme not covered by the provisional agenda for the second session include: (i) **item 3 (b)**: facilitate and exchange experiences with respect to the liberalization of services sectors and the application of laws and regulations aimed at this end, with a view to stimulating the development of these sectors; (ii) **item 3 (c)**: analyse ways and means of fostering the market-oriented development of the service sector including, where appropriate, through deregulation and privatization; (iii) **item 3 (e)**: examine ways of enhancing access to and use of information networks and distribution channels; (iv) **item 3 (f)**: examine the role of joint ventures in stimulating the development of service sectors in developing countries and promoting trade in services and their access to technology; (v) **item 3 (g)**: assess the impact of progressive liberalization and of service imports in the development of competitive services sectors, and examine difficulties faced by developing countries which prevent them from increasing their participation in world trade in services; and (vi) **item 3 (k)** in carrying out its work, the Standing Committee would give special attention to the situation of least developed countries, and suggest ways and means for improving their capacity.

[2] Central Product Classification (CPC).

provide information on progress achieved at international and national levels on services trade statistics. The paper discusses in some detail the efforts of other agencies involved with service statistics, in general, and trade-in-services statistics, in particular. Work has been undertaken by various international organizations to address the inadequacies of internationally comparable statistics on trade in services, i.e. under-estimation and over-estimation of certain flows, insufficient disaggregation, inconsistencies with national accounts statistics, lack of internationally-agreed concepts and definitions as compared to the ones existing on merchandise trade and the impossibility of identifying trade partners and the direction of trade. Although more detailed statistics exist for certain sectors and for a few countries, the only internationally comparable source available consists of the IMF balance-of-payments statistics which are being improved, both in terms of concept and degree of detail, through the new Balance of Payments Manual and Compilation Guide. The following aspects should be highlighted with respect to recent efforts to improve services trade statistics:

(a) Completion of draft CPC with its explanatory note by Voorburg Group and UNSTAT.
(b) Completion by IMF of Balance of Payments Manual and Compilation Guide.
(c) Methodological work and data collection by EUROSTAT.

6. The paper reports the on-going discussion with the United Nations Statistical Office (UNSO), General Agreement on Tariffs and Trade (GATT), International Monetary Fund (IMF), International Civil Aviation Organization (ICAO), World Tourism Organization (WTO) and others on the initiation of a manual for the collection of data on trade in services.

7. The Uruguay Round multilateral negotiations for a General Agreement on Trade in Services (GATS) have highlighted new conceptual, harmonization and collection difficulties concerning trade-in-services statistics. UNCTAD/SDD/SER/1 discusses the needs of negotiators and policy-makers (i.e. for indications by mode of delivery and sectors) arising from GATS. A multilaterally agreed definition for services trade has been proposed under GATS. It includes four modes of delivery: "cross-border", "movement of consumer", "commercial presence", and "movement of natural persons" (see Art. I of the proposed GATS). Conceptual problems have arisen in particular with regard to the effects of trade through commercial presence, where economic relations are viewed from the perspective of "ownership and control" (transactions between nationals, entities or persons, from different countries) rather than from the traditional one based upon the "country of residency" of trading partners (see Art. XXXIV of the proposed GATS).

8. As a step in fulfilling its mandate, the Committee may wish to obtain more specific information from member Governments with respect to efforts being made by national offices and academic institutions aimed at developing methodologies for estimating trade in services according to the four modes of delivery mentioned as well as in addressing other related conceptual problems.

II. DATABASE ON MEASURES AFFECTING SERVICE TRADE

9. **Item 2 (b) of the work programme calls upon the Standing Committee to *collect and disseminate information on measures, including laws and regulations affecting the access of services and service suppliers to world markets, including a study of the possibility of setting up a computerized database in this regard, with a view to enhancing the service exports of developing countries*.**

10. In order to provide the Standing Committee with the necessary elements upon which to take a decision on the establishment of such a database, the secretariat has prepared a background note (TD/B/CN.4/26). A prototype database is being

designed for demonstration to delegations during the second session. The Standing Committee will be invited to comment on the proposed design of the database. The note discusses the rationale and utility of the database, describes the basic features and inputs required, underlines the major issues and anticipated difficulties pertaining to the collection and management of data, and identifies various options for building the database. The note also takes cognizance of the specificity of the regulatory situation in services where regulation appears as the norm rather than as the exception. The ubiquity and complexity of regulations in the service sector poses special challenges for a database in terms of classification and management of data as well as in terms of coverage.

11. The proposed database is expected to facilitate the promotion of transparency of the regulatory environment in the service sector by identifying measures with potential impact on trade in services and making them widely known. It is envisaged that the database would function as an information tool for: (a) developing-country negotiators in formulating requests and assessing offers; (b) service exporters from the private sector in identifying conditions and procedures of entry in potential markets; (c) policy-makers in examining the regulatory experience of other countries and in comparing regulatory options, and (d) researchers analysing regulatory structures in specific service sectors and countries. In setting up such a database, UNCTAD would be able to draw on its long-standing involvement with issues concerning trade in services and its expertise in developing databases on trade measures affecting trade in goods.

12. The proposed inputs into the database would include the following: (a) the country which applies the measure; (b) the service sector affected by the measure; (c) the kind of measure imposed; (d) a detailed description of the measure; (e) the regulatory instrument which contains the measure; (f) the source of information on the measure; (g) the mode of delivery affected by the measure; and (h) the conformity of the measure with multilateral trade principles such as market access, national treatment, MFN treatment, and others. There would also be a provision for entering the remarks of the user, which would customize the database to some extent.

13. The proposed design of the database will allow the user to access information according to four parameters, namely the country, the service sector or subsector, the kind of measure used, and the mode of delivery affected. A particular service could be accessed according to the CPC as well as the list of services prepared for multilateral negotiations on trade in services in the Uruguay Round. The user would be able to access information on the regulatory profile of a country with respect to selected service sectors and compare it with similar profiles for other countries. Alternatively, data could be extracted on which countries use a certain kind of measure in selected sectors, or on measures affecting a certain mode of delivery in a sector and/or country. A glossary would offer information on terms warranting explanation.

14. It is anticipated that a number of practical difficulties may arise in the compilation and updating of data. The enormous scope of the database may render comprehensive coverage of information very difficult. The large variety of regulatory instruments in most sectors, the coverage of measures contained in provincial legislation and self-regulation by private bodies, and language difficulties pose further complications. The supply of data from countries and the updating of information could present difficulties. A classification system for measures affecting service trade would need to be devised in order to make information more efficiently accessible. Procedures for assessing how a measure affects different modes of delivery and the conformity of the measure to multilateral trade principles would also need to be clarified.

15. The note identifies some major options for dealing with these problems. As most of the anticipated difficulties pertain to the scope of the database, the options essentially involve a reduction in scope by:

(a) Limiting the coverage of the database at the initial stage to a selected number of countries: possible options in selecting

countries could be: (i) those that volunteer to supply information to the database, (ii) those which constitute major potential markets for service exports from developing countries, and (iii) those for which regulatory information is more readily available;

(b) Limiting the coverage to selected sectors at the initial stage: sectors of export interest to developing countries could be featured on a priority basis. The Committee may wish to consider selecting those sectors for which regulatory information is more easily identifiable, but where centralized and structured ways of accessing such information are absent;

(c) Confining information on self-regulation by private bodies to the more important professions, licensing or accrediting authorities giving requirements for permission to practice; and

(d) Relying on secondary and synthesis sources for regulatory information in addition to the direct use of regulatory instruments.

16. In conclusion, the note proposes a series of recommendations for consideration by the Standing Committee regarding future work on the database. First, it suggests clear intergovernmental arrangements for the compilation and supply of data, in view of the extent of regulation in services and the wide scope of the proposed database: the UNCTAD secretariat could not carry out the necessary data collection and processing without the active collaboration of all member Governments, including arrangements to supply information on national regulatory structures and instruments related to trade in services. Secondly, specific modalities need to be identified for such collaboration. Coordination could be handled through focal points in capitals, and mechanisms for effective interaction between them and UNCTAD could be devised. Thirdly, a timetable could be agreed upon by the Standing Committee for inclusion in the database of specific countries and sectors. This could provide for adequate preparatory work and offer guidance, especially in the case of countries which may have difficulty in collecting and supplying information. Fourthly, possibilities of collaboration between UNCTAD and other international forums and agencies active in this area could be explored.

III. COMPARATIVE ANALYSIS OF SERVICE SECTORS

17. **Item 3 (a) of the work programme instructs the Standing Committee to *conduct a comparative analysis of service sectors in developing countries; such analysis will: (i) examine the role played by services in contributing to growth and sustainable development, including an examination of the contribution of the producer services sector in facilitating the competitiveness of goods-producing sectors, and to the economy as a whole; (ii) assess weaknesses and capabilities; and (iii) identify policies to assist developing countries in developing and strengthening their competitive services sectors, including infrastructure relating to services.***

18. The secretariat has prepared a background note (TD/B/CN.4/23) intended to help initiate the work of the Committee on this topic. In the Cartagena Commitment, Governments recognized that developing countries should pursue policies to create appropriate conditions for the development of their national services sectors. Furthermore, the international community was encouraged to support such efforts to strengthen the production and export capacity of services sectors. The note provides a point of departure for work by the Committee in identifying elements for possible policy options aimed at achieving the objectives set out in the Cartagena Commitment.

19. The note draws on previous work carried out in UNCTAD in a series of national, regional and sectoral studies on services. These were specific responses to various needs of individual countries and regions limited by the objectives of individual projects and the extent of financial resources. The studies therefore do not constitute a systematic investigation of service sectors in developing countries. This is reflected in the note and the recommendations

made are of necessity tentative. They are mainly aimed at assisting the Standing Committee in determining the orientation of future work with respect to analysis and policy options.

20. The provision of physical and social infrastructural services has long been recognized as important for the competitiveness of national economies, the attainment of strategic goals such as national security, the enhancement of productive sectors, the development of human capital, the upgrading of employment opportunities and responding to needs of the population. In their endeavour to secure the widest possible geographic and social coverage while retaining control over strategic services and, at the same time, securing the required financial resources needed to establish such operations. Governments became major suppliers of basic services in most countries, both developed and developing.

21. More recently, the so-called "service revolution" has brought increased awareness of the impact of services on (a) productivity gains and increased international competitiveness achievable through adequate uses of key producer services, and (b) the domestic capacity to generate and retain, under the control of nationals, a growing portion of the value added to the economy by service activities. Increasing tradeability of services, mainly fuelled by advances in information technologies, has implications for both the import and the export of services from developing countries. Developing countries have relied on "imported" services while exploring the opening of new opportunities to expand their services exports. This has intensified the dilemma arising from the need to provide the widest possible coverage of basic services while maintaining national sovereignty and creating conditions for the efficient and competitive operation of such activities.

22. The traditional weaknesses of domestic services sectors in developing countries, coupled with inadequate infrastructure – especially in the area of telecommunications – has inhibited their capacity to expand services exports. Many labour-intensive services could be traded more successfully if adequate infrastructural facilities were available. This would be the case of some professional services such as computer software design, accounting, engineering and architectural services, digitalization of data and others. Deficiencies in infrastructure have been exacerbated by the absence of specific policies oriented towards gaining better access to, and greater participation in, world trade in services. This applies especially to areas where traditional sources of competitive advantage would give many developing countries a substantial competitive edge in labour-intensive services which could profit from the abundance of human resources at low wages and the availability of skilled professionals in many fields. Competitive advantages deriving from geographical location are not always fully exploited as the substantial potential for regional and subregional cooperation in the area of services has not been adequately developed.

23. In addition, many external obstacles impede the full realization of developing-country export potential in services. Difficulties in acquiring modern technologies and in gaining access to information networks and distribution channels make it hard for potential service exporters to penetrate foreign markets and to increase their participation in international trade in services. In many areas, these setbacks are exacerbated by problems related to market concentration and anti-competitive practices. Barriers that directly affect modes of delivery are particularly serious for developing countries, especially those which affect exports of services through the temporary movement of people. Obstacles to the mobility of persons are proliferating, in sharp contrast to the greater mobility of capital and information around the world. The general tightening of immigration laws threatens to restrict trade in services conducted through the movement of natural persons. Many service producers from developed countries benefit from home country support in certain areas, e.g. government subsidies, preferential tax treatment, easier access to capital, or intra-firm arrangements aimed at securing markets at various geographical locations around the world.

24. Trade policies directed at expanding exports of services from developing countries may need to take into account *inter alia* the factors outlined above. A few developing countries have implemented highly successful strategies to this end by taking advantage of their geographical location, availability of skilled personnel, language proficiencies and high-quality physical infrastructure. Certain strategies have been aimed at drawing on opportunities offered by regional and sub-regional cooperation agreements, and overcoming competition and market-access disparities in internationally traded services.

25. The development of policies regarding services as well as the pursuit of effective cooperation and negotiation at the sub-regional, regional and multilateral levels may require further analysis of a number of issues. At the international level, the Uruguay Round negotiations for a General Agreement on Trade in Services call for an assessment of the trade opportunities presented therein. It may also be essential to identify measures affecting trade in services through, for example, setting up a database to promote transparency. Some issues have already been identified in the work programme of the Standing Committee. The impact of market-oriented policies and of liberalization in fostering services sectors merits analysis. This could be assisted by an exchange of experiences. A detailed examination could be undertaken of the impact of subsidies on trade in services and of the difficulties faced by developing countries in their attempts to increase their participation in world trade in services, including ways of enhancing access to and use of information networks and distribution channels as well as the facilitation of service exports through temporary movement of personnel. An analysis of the role of joint ventures, especially with regard to transfer of technology and the modernization of services in developing countries, might also prove useful in this context. In carrying out these tasks, particular attention could be given to the problems of the least developed countries.

26. The comparative analysis of services sectors in developing countries would be aimed at identifying policies to assist developing countries in fostering and strengthening their competitive services sectors (item 3 (a) of the work programme). In conducting this analysis, the Committee could draw on previous work carried out by UNCTAD (see synthesis in TD/B/CN.4/23) and specific studies being carried out under item 3 of the work programme. With a view to organizing its work systematically, the Committee might wish to consider linking the work to be carried out under the present item with that under other items, then identify priority issues.

27. The Committee may also wish to examine the strategies and policies used by various countries to strengthen the competitiveness of services sectors. This may be done on the basis of submissions by member States including both developed and developing countries, as well as further studies by the secretariat. Following the analytical aspects (item 3 of the work programme), the Committee may wish to examine the strengths and weaknesses of developing countries in specific services sectors, based upon studies by the secretariat and information provided by member States, private sector entities and non-governmental organizations. In so doing, priority could be given to sectors with a major role in the development process, and those in which developing countries possess a comparative advantage and export potential. In linking future work under the present item to the current work programme, the Committee may wish to give particular attention to assessing the impact of progressive liberalization of trade regimes and of service imports in the development of competitive services sectors. Of particular importance in this regard would be examining the difficulties faced by developing countries which prevent them from increasing their participation in world trade in services (item 3 (g)).

IV. IMPACT OF SUBSIDIES ON TRADE IN SERVICES

28. **Under item 3 (d) of its work programme, the Standing Committee will *study the impact of subsidies on trade in services, especially on the exports of***

developing countries. With the exception of certain sectors where subsidy measures have been well-documented, few studies have been done to identify subsidies bearing on trade in services or to assess their trade impact. In the Uruguay Round, negotiators postponed the negotiations related to specific disciplines concerning subsidies on services; Article XV of the draft GATS would oblige members to enter into future negotiations with a view to developing the necessary multilateral disciplines to avoid the trade-distortive effects of subsidies.

29. The pilot study (UNCTAD/SDD/SER/3), prepared by the secretariat to initiate discussion on this item, noted that the international community had traditionally had difficulty in drawing up disciplines on subsides on either goods or services owing to the lack of an international consensus on the appropriate role of government in pursuit of economic and social objectives. The Agreement on Subsidies and Countervailing Measures, contained in the draft Final Act of the Uruguay Round which applies to trade in goods, represents international consensus in this area. To a large extent the concepts therein could apply to trade in services. However, it must be borne in mind that the definition of trade in services contained in the draft General Agreement on Trade in Services defines such trade as including commercial presence and the movement of natural persons; for example, benefits provided by Governments to the foreign operations of domestic firms or to the travel of persons supplying services would also be considered as subsidies to trade in services.

30. Initial research has revealed a variety of subsidies prevalent in a number of different services sectors. The study identified in particular (a) subsidies to infrastructural services, e.g. transport and telecommunications, (b) subsidies to "export market development", e.g. governmental financial assistance for feasibility studies, preparation of bids, project proposals, etc., especially in sectors such as construction and engineering design, (c) subsidies in media services - e.g. film productions, advertising and publishing - in the form of direct grants, subsidized postal rates, etc., (d) subsidies to the financial service sector, e.g. through the tax system, primarily the treatment of losses carried forward or back from one tax period to another, and (e) subsidies to goods which may constitute subsidies to traded services, e.g. subsidization of the production and maintenance of ships and aircraft, soft loans and other assistance to hotel construction, etc.

31. The study treats the problems of calculating the impact of subsidies on trade in services and describes some of the practices of certain countries which have already drawn up legislation or taken specific action to deal with subsidized or dumped exports of services. The study also addresses perceived abuses in the current subsidies/countervailing duties and anti-dumping regimes (as they apply to goods) which should be avoided in dealing with subsidies to services. The study also proposes further work to identify subsidies and their impact on the sectors mentioned above. This could be done through submissions by members of the Committee or case studies.

32. The study addresses the methodologies to be employed in identifying the trade-distorting impact of dumping and subsidies. Traditional methodologies may not link subsidies to production or export (e.g. tax exemptions or tax credits which may be allocated to production or exports of other services). In sectors where services are electronically transmitted, determining the impact may be a complex undertaking. Many services tend to be tailored to the needs of a particular end-user (custom design), rendering "unit price" somewhat difficult to calculate. Measuring subsidies related to services, particularly information/knowledge-based services transmitted electronically, poses problems which will require extensive additional study and analysis.

33. The pilot study stresses the need for a more systematic identification of subsidies to services production and trade as a prerequisite for the implementation of item 3 (d) of the work programme of the Standing Committee. Additional work may need to be undertaken by the secretariat to assist the Committee, including a review of available material on subsidies in services,

and case studies with a sectoral orientation, focusing on sectors of export interest to developing countries and sectors where subsidies are perceived to have a major impact. Future work could also include an examination of issues specific to trade in services such as those arising from modes of delivery. The Standing Committee could provide guidance on further work under this item, and seek the cooperation of other international organizations and key countries which have largely transparent administrative systems.

V. TEMPORARY MOVEMENT OF PERSONS AS SERVICE SUPPLIERS

34. **Under item 3 (h) of its work programme, the Standing Committee will *identify and analyse the possibilities for developing country services exports through temporary movement of persons as service suppliers, be it as sole service providers or as personnel; and analyse the measures affecting their ability to export such services in the face of barriers to the temporary movement of persons across national frontiers to supply services.***

35. The secretariat has prepared a note (TD/B/CN.4/24) intended to assist the initiation of work by the Committee on this subject. As a first step, the note describes the "problematique" of trade in services carried out through the temporary movement of natural persons. It examines such aspects as (a) the importance of the temporary movement of persons from developing countries, (b) the sectors where such temporary movement is concentrated, (c) the general characteristics of immigration laws pertaining to the temporary movement of service suppliers, including the identification of sectors which tend to benefit from more favourable treatment, and (d) international, regional, sub-regional and bilateral agreements dealing with the movement of persons. The international movement of labour refers to the temporary relocation of services providers but excludes permanent migration. The Uruguay Round negotiations have recognized that movement of persons constitutes a "mode of delivery" for services.

36. Many developing countries have been able to foster exports and compete at the international level in trade in goods. Nevertheless, despite the comparative advantage of most developing countries in the abundant supply of unskilled and certain kinds of skilled labour, they frequently find it difficult to reap the full benefits of international trade in services when such trade involves the physical cross-border movement of persons, as a large number of restrictions prevail over the movement of personnel. This impinges on prospects for growth of developing-country firms in a number of services sectors where trade is highly dependent on the cross-border mobility of persons. A question to be addressed is whether, like the case of goods, developing countries can take full advantage of export markets for services on the basis of lower costs for unskilled, skilled and highly skilled labour.

37. Many developing countries rely heavily on the cross-border movement of persons for services exports earnings. For many, especially the least-developed countries, remittances – the portion of migrant workers' earnings sent back from the country of employment to the country of origin – are sizeable in relation to GNP and total export earnings, and thus constitute an attractive economic development opportunity. These "trade flows", calculated from payments made by nationals residing/working in foreign countries, do not show the full importance of the movement of persons as a mode of supply of services: many services provided by persons on a temporary basis in a foreign country are reflected in payments to a firm for services rendered and, in many cases, the movement-of-persons component may be only part of the final service package.

38. The temporary movement of personnel across national frontiers is not only significant but increasing in volume with the trend towards globalization of markets. Nor is it only in one direction. Growth in temporary movement of personnel has not been limited to that associated with exporting firms, even labour-services exporters, but includes that arising from the desire of manufacturers and investors to staff foreign operations with their own personnel

and to provide for the maintenance of goods exported. Developed countries facing shortages of skilled personnel in such labour-intensive services such as construction, teaching, nursing, software design and computer operation may find that they have an interest in promoting a mutually advantageous division of labour in services sectors. This could open up possibilities for developing countries to increase their share of world trade in services.

39. From the point of view of developing countries, the exodus of trained people to more developed countries is perceived as a "brain drain" or "reverse transfer of technology". However, the organization of temporary movement of persons through service firms to supply specific services abroad could help in the acquisition of skills. Individuals would not need to relocate permanently in foreign countries. Services firms could also enhance their competitiveness on the basis of the human capital embodied in their workers and the organizational and technical know-how accumulated by the firm itself.

40. An examination of laws and regulations in developed countries covering temporary entry of persons reveals a general trend away from settler migration. There is an increasing application of selective policy favouring the entry of highly skilled labour. This labour force has in many cases moved within channels created and managed by large companies. Entry is essentially based on an "economic needs" or "labour market" test and usually involves a certain category of persons such as business visitors, intra-corporate transferees and services vendors who are foreign sales representatives of a service provider. Laws sometimes identify particular categories of professionals for whom temporary entry facilities are more liberal than usual. Such categories include intracorporate transfers of senior managers or technicians or the entry of artists or educators with special skills. Certain specific occupations or sectors may be exempted from labour certification requirements, because of labour shortage or special needs, as for example medical personnel (particularly nurses) and hotel and catering workers. Furthermore, temporary entry of workers is often regulated through bilateral agreements which provide for numerical quotas for the entry of seasonal workers or other categories of temporary labour from certain countries.

41. Provisions governing the movement of persons as service suppliers have been incorporated, to varying degrees, into regional and subregional agreements. TD/B/CN.4/24 describes the approach taken under some of these agreements, including the European Community (EC), the European Economic Area (EEA) and the North American Free Trade Agreement (NAFTA) as well as subregional agreements among developing countries.

42. Barriers to the temporary movement of persons that arise from immigration laws and regulations constitute a major impediment to the realization of the competitive potential of developing countries in labour-intensive services. The draft GATS, emerging from the Uruguay Round, recognizes that the movement of "natural persons" to provide services in another country constitutes "trade" in services and that the conditions of access of such persons is a legitimate object of negotiations on trade concessions. This is a step forward in assisting developing countries to increase their participation in world trade in services. The draft GATS defines "trade in services" as including the "supply of services by natural persons of one party in the territory of another party". Commitments with respect to the movement of persons could thus be negotiated on a horizontal, sectoral or sub-sectoral basis. An "Annex on Movement of Natural Persons Supplying Services under the Agreement" defines the scope of the Agreement (i.e. it does not apply to measures affecting natural persons seeking access to the employment market of a Member nor does it apply to measures regarding citizenship, residence or employment on a permanent basis). It provides guidance for the negotiation of specific commitments. The inclusion of GATS in the Uruguay Round Final Act would establish concessions with respect to the movement of persons as a part of the overall balance of trade rights and obligations rather than exclusively as a matter of immigration laws. However, the conditional offers of developed countries are of a horizontal nature, aimed mainly at facilitating intracorporate transfers: to be of effective benefit to developing

countries, this could be improved with some sectoral specificity.

43. Appropriate national policies aimed at enabling developing countries to benefit from market access opportunities may include the promotion of (a) export-oriented labour service firms, and (b) off-shore labour service exports. For many countries, the greatest export opportunities for labour services may exist in the context of regional markets falling within regional integration arrangements. Regional and preferential arrangements among developing countries cover trade in services, including the movement of labour, to different degrees. Some have relatively liberal provisions in this respect. (See also para. 43 above.)

44. As suggested in TD/B/CN.4/24, in order to carry out effectively its mandate, the Committee may wish to undertake the identification of occupations and sectors where temporary entry facilities are relatively liberal. The members of the Committee could contribute to providing information on provisions in their regulations and laws as regards temporary labour movement. The Committee could identify possibilities for mutual beneficial liberalization of services activities for which developing countries possess a comparative advantage and where developed countries are facing dramatic shortages. (See also para. 40). More information could be requested from the members of the Committee with respect to (a) the inclusion of temporary movement of persons in trade agreements, (b) the problems faced in penetrating foreign markets, and (c) the sectors in which trade is heavily dependent on the temporary movement of persons. The Committee could examine how to assist developing countries in effectively benefiting from commitments in this area through the development of services enterprises and through the organized temporary movement of labour.

VI HARMONIZATION AND RECOGNITION OF QUALIFICATIONS

45. **Under item 3 (i) of its work programme, the Standing Committee will *analyse the on-going processes of recognition and harmonization of qualifications*.**

46. As preparation for this analysis, the secretariat has prepared a note (UNCTAD/SDD/SER/2) giving background information on harmonization and recognition of qualifications. The note covers laws and regulations in the professional service sector, highlighting those pertaining to qualifications and standards; it outlines the initiatives of government and the private sector aimed at achieving harmonization and recognition of qualifications, and presents preliminary findings and recommendations on areas where further work might be undertaken by the Standing Committee. Also included is a review of relevant actions at the government level, i.e. regional and sub-regional trade and market integration agreements on harmonization and recognition of qualifications.

47. Practitioners in the fields of accountancy, law, medicine, architecture, construction, engineering, and education normally require accreditation by Governments or statutory professional associations through diplomas, certificates and licences. These are highly regulated. Differing qualification systems and standards among countries can pose an obstacle to the liberalization of trade in services. Certain qualifications and standards have been set for consumer protection and civil liability. Some professional services require intimate knowledge of local legal, economic and geographical environments; qualification systems and standards are thus designed to meet these requirements as well as to include universally required knowledge. Often, however, trade is affected by measures and regulations beyond those related to the competence of service practitioners. These include: (i) residency requirements; (ii) visa and work permit requirements; (iii) restrictions concerning establishment and scope of activities; (iv) restrictions on transborder data flows; (v) restrictions on capital transfer; (vi) prohibition against non-nationals obtaining local qualification; (vii) restriction on the international use of firm names; (viii) tax discrimination; (ix) discriminatory licensing of firms; (x) prohibition against foreign-produced broadcast material; and (xi) the favouring of local

agencies in government procurement. With a view to eliminating barriers to trade in professional services, the relevant regulations and measures need to be assessed thoroughly. In the process of harmonization and recognition of qualifications, maintaining minimum standards and local knowledge requirements is a key aspect. Moreover, restrictions affecting trade in professional services in all modes of supply need to be addressed in parallel; while harmonization and recognition of qualifications is an important aspect in liberalizing trade in professional services, other obstacles to trade in professional services must also be dealt with in any initiative to liberalize trade in professional services.

48. Harmonization and recognition of qualifications for accredited professional services have been treated as a significant issue in the multilateral effort to liberalize trade in services. Article VII of the draft GATS encourages recognition of education and experience obtained, requirements met, and licenses or certifications granted in a particular country. It calls on the Parties to improve transparency in domestic rules, regulations and measures affecting services. It sets out the objective of establishing and adopting, in cooperation with relevant intergovernmental and non-governmental organizations, common international standards and criteria both for such recognition and for the practice of service trades and professions. Moreover, Article XVIII of the draft GATS encourages Parties to negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI, "Market Access" and Articles XVII, "National Treatment", including those regarding qualifications, standards or licensing matters. In the negotiations on initial commitments, requests have been made with respect to recognition of qualifications in a variety of sectors, including accountancy, architecture, engineering, legal services, etc.

49. Some initiatives in the context of regional trade and market integration agreements have sought to recognize and harmonize qualifications in professional services while eliminating regulations that discriminate against foreign service suppliers in terms of market access and operations. Examples are initiatives under the European Community (EC), the European Economic Area, Australia-New Zealand Closer Economic Integration Agreement, The United States-Canada Free Trade Agreement, and North American Free Trade Agreement (see para 43). Their experiences in negotiating harmonization and recognition of qualifications suggests that consideration must be given not only to qualifications *per se*, but also to standard-setting factors such as education and training requirements, and to the structure of services activities. This adds to the complexity of the process. While some trade agreements have set as a goal harmonization and recognition of qualifications among signatory countries, the actual work to achieve this objective is far from over.

50. Trade in a professional service sometimes implies very little movement of accredited personnel, as a major part of the work may be carried out locally by others, or be sent as transborder data flows, or be delivered by non-accredited technical personnel. For services such as construction and engineering, however, harmonization and recognition of qualifications can have considerable effect on exports, as meeting qualification requirements is an important factor in the ability to bid for a contract in foreign markets. Information on how trade in various professional services takes place is scarce; this hampers efforts to assess the importance of harmonization and recognition of qualifications. The forms of trade in professional services might profitably be studied so as to assess how regulations and measures, including those relating to qualifications and standards, affect trade. Understanding how harmonization and recognition of qualifications affect different professional services would facilitate the identification of priorities for further work along these lines.

51. Except for accountancy, information is somewhat limited on how professional associations view the issue of harmonization and recognition of qualifications. Professional accountancy associations have become actively involved at the international level in addressing such problems. This may partly reflect their long international exposure to trade in services as well as the existence of

global networks of big accountancy firms. For other professional services, activities at the international level with respect to harmonization and recognition of qualifications are less apparent.

52. The note mentions that, in order to identify clear policy options at the national and international levels, further work is required, particularly on two issues: (a) What are the priority services for harmonization and recognition of qualifications? and (b) What are desirable policy courses for developing countries in dealing with the issue of harmonization and recognition of qualifications? The secretariat is compiling information on professional qualifications; the Standing Committee might wish to encourage member Governments to provide the secretariat with information on professional associations in their countries, that is, names, addresses, aims, procedures, and involvement in recognition and harmonization of qualifications. The Standing Committee might wish to invite major international and regional professional associations to make submissions on key issues pertaining to the harmonization and recognition of qualifications, and seek their views as to how UNCTAD could assist in this area. The Standing Committee might also wish to study the benefits which would accrue to developing countries from multilateral procedures for harmonization and recognition of qualifications, so as to recommend policy options. The database on measures affecting trade in services, envisaged under item 2(b) of the Work programme of the Standing Committee, could give priority to the inclusion of services subject to licensing and certification requirements.

VII. REGIONAL, SUB-REGIONAL AND INTERREGIONAL COOPERATION ON SERVICES

53. **Under item 3(j) of its Work Programme, the Standing Committee will *identify and analyse policies aimed at the promotion of regional, sub-regional and interregional cooperation on services, including among countries at different levels of economic development.***

54. Cooperation on services is gaining in importance as a component of international policies on services trade. At the multilateral level, the draft GATS would allow Parties to enter into limited agreements among themselves for liberalizing trade in services. Developed countries have fully incorporated services into their cooperation and integration agreements. The free movement of services, along with that of persons, goods and capital, is one of the central principles of the single market of the European Community and has been included in the European Economic Area. OECD countries have also agreed on provisions for the liberalization of services and the mobility of capital and persons among member countries. In the case of countries at different levels of economic development, the North American Free Trade Agreement (NAFTA) (building upon the experience of the Canada-United States Free Trade Agreement) also covers services. Lome IV and the Third Generation Agreement of the Andean Pact also treat services as an element of international cooperation.

55. Several initiatives for liberalizing trade in services among developing countries may be found in the Latin American region. The Andean Pact has included services in integration efforts (see TD/B/CN.4/Misc.4). The Group of 3 (Mexico, Colombia and Venezuela) has been negotiating liberalization of trade in services within the context of a trade agreement; members of the Latin American Integration Association (ALADI) were at the point of considering a proposal for liberalizing trade among members. MERCOSUR member countries have introduced the issue of services in a cooperation and integration agreement. Trade in services has figured in a number of bilateral and trilateral trade agreements, e.g. between Ecuador and Bolivia with Mexico, and Chile with Bolivia.

56. In Africa alone, there are nine economic groupings in which the issue of trade in services forms an integral part of cooperation and integration agreements. A few examples are illustrative. The Treaty establishing the African Economic Community (AEC) signed in June 1991 in Abuja, Nigeria, is aimed, *inter alia*, at achieving the liberalization of services among Member States. It covers such services as transport, communications, tourism and broadcasting. The Treaty instituting the Arab Magreb Union (AMU), signed in February 1989, has

as one of its goals: "working gradually towards achieving free movement of persons and transfer of services, goods, and capital" among member States. The AMU cooperates on the joint development of services and services infrastructure in the field of transportation, telecommunications, postal services and financial services, including insurance and reinsurance. The Economic Community of West African States (ECOWAS), set up in 1975 by the Treaty of Lagos, has recently been revised. The earlier Treaty, as well as the revised Treaty (not yet signed and ratified), gives services activities comprehensive coverage. The revised Treaty will have wider coverage and provisions for specific objectives and guidelines for action.

57. Although developing countries are taking a greater interest in cooperation and integration arrangements covering services, as shown by important policy statements and the presence of clear mandates in many cooperation agreements, emphasis remains on the development and strengthening of infrastructural networks among member countries. Regional groupings may eventually define the strategic importance of various service activities from the point of view of their expected contribution to the integration and cooperation effort. For certain services, control considerations, e.g. the protection of cultural values may take priority over efficiency. A preferential service area, with a defined market and technological resource base, could facilitate the development of efficient and competitive regional services supply. Furthermore, it could help service firms from the region or sub-region to strengthen their competitive position with respect to third countries.

58. It should be noted that approaches differ with respect to cooperation on services at the regional and sub-regional levels. In some cases, services were featured in the original agreements. In others, such provisions have been added or expanded as awareness grows regarding the potential for trade in services and its importance for the development of all members of regional economic groupings.

59. Three basic approaches may be identified with regard to cooperation and integration in the field of services: (a) A horizontal approach (as followed by EC, OECD, EEA) whereby member countries commit themselves to the free movement of services, as a right under their agreement, excepting stipulated reservations. (b) A negotiated approach (for example, GATS) where, with the exception of the MFN commitment, the aim is negotiated progressive liberalization (based upon a "positive list") which will depend on the reciprocal gains that member countries anticipate as a result of an exchange of concessions. (c) A combination approach (as in NAFTA) where reservations and a "negative list" provide for both full automatic liberalization and negotiated progressive liberalization in specific sectors.

60. In view of the wide variety of initiatives being undertaken to liberalize trade in services at the international, regional, sub-regional and bilateral levels, the secretariat will prepare a document outlining the extent and manner in which services have been treated in individual agreements. To this end, the UNCTAD secretariat would welcome contributions from the secretariats (where they exist) of such agreements and from member countries identifying the instruments and mechanisms of international agreements on trade in services, the policies adopted to promote trade in services among countries adhering to these agreements, and their perception as to the impact of the agreement on the size and direction of trade flows in services.

VIII. TECHNICAL COOPERATION

61. Trade and Development Board decision 309 (XXX) specified that the UNCTAD secretariat should assume the task of "assisting, upon request and within available resources, Member States in their analysis of the role of services in their economies". The Final Act of UNCTAD VII called upon UNCTAD to continue its programmes of technical assistance to developing countries in the field of services. UNDP was invited to consider favourably the request for the provision

of adequate financial resources for this purpose. UNCTAD VII also requested the UNCTAD secretariat to provide assistance to developing countries to enable them to participate more effectively in the Uruguay Round negotiations, which included trade in services. Through the "Cartagena Commitment", member Governments agreed that the work programme covering trade in services should focus, *inter alia*, on "Technical cooperation, at the national, regional and multilateral levels, to support and assist developing countries in identification of their weaknesses and capabilities in the services sector and to make their services sector more competitive". (TD/364 para. 185 (k)) Likewise, the work programme should be oriented towards "technical cooperation with those developing countries which lack the necessary infrastructures needed for the evolution and development of their national service sectors". (TD/364, para. 185 (l))

62. Pursuant to its mandate, UNCTAD has been rendering technical assistance for the development of the service sector to developing countries upon request. More than 40 developing countries have made such requests.[3] UNCTAD has responded positively to the extent of its means, the minimum response being that of sending a technical mission to assist in conceiving and organizing national studies through national seminars or the preparation of preliminary "profiles" of the services sector in the country concerned. An important function in this regard has been the assistance given to local experts in preparing national studies on services and analysing the issues pertaining to the relationship between services and development. This has been possible largely through UNDP support, particularly in the context of existing technical assistance projects. In certain cases, as noted below, developed country Governments and private institutions have collaborated with UNCTAD in carrying out these tasks.

63. Full-fledged, comprehensive studies have been possible when funds allocated through national UNDP IPFs have been made available. This has been the case, for example, in the Dominican Republic and Mexico. For the latter, the project was also oriented towards strengthening the country's participation in GATS and NAFTA negotiations. Similar studies have recently been initiated in developing countries in other regions.

64. Developing countries seeking technical assistance on services are guided by various concerns, which lead them to give different emphasis to such considerations as for example: (a) the identification of policy options for dynamizing the role of producer services, particularly in the attainment of increased levels of competitiveness in manufacturing, agriculture and services sectors, as an element in the adjustment process; (b) the contribution of the services sector to balance-of-payments accounts and to actual and potential foreign exchange earnings; (c) the contribution of the services sector to more, and higher-quality, employment opportunities, and in increasing the knowledge-intensity of human capital; (d) the role of an efficient services sector in attracting foreign direct investment, and (e) effective participation in multilateral, regional and bilateral negotiations on services. The interregional and the three regional projects financed by UNDP to assist developing countries to participate effectively in the Uruguay Round place high priority on services. Projects in Asia and the Pacific and in Latin America and the Caribbean have had specific components addressing services. There has also been support from donor countries and institutions. The European Community has collaborated with UNCTAD in providing experts and financing for in-depth studies on producer services in each of the member countries of the Andean Group. The Government of France provided UNCTAD with financial resources and experts from the Centre des Etudes "Economie et Humanisme" for the preparation of studies on Cape Verde, Dominican

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[3] Andean Group (i.e. Bolivia, Colombia, Ecuador, Peru, Venezuela), Argentina, Bahrain, Cape Verde, Barbados, CARICOM group as a whole, Brazil, Chile, China, Côte d'Ivoire, Costa Rica, Cuba, Cameroon, Malta, Dominican Republic, Egypt, El Salvador, Guatemala, Honduras, India, Jamaica, Kenya, Maldives, Mauritius, Mexico, Morocco, Nicaragua, Panama, Senegal, Sri Lanka, Tanzania, Trinidad and Tobago, Tunisia, Socialist Republic of Viet Nam and Zambia.

Republic, Mexico, Sri Lanka and Tanzania. Building upon this experience, the French Government, the International Development Research Centre (Canada) and the Carnegie Foundation (United States) are funding the Coordinated African Programme of Assistance on Services (CAPAS). It is aimed at supporting the formulation of policies to strengthen the contribution of services to the economies of selected countries in Africa.

65. UNCTAD is also collaborating with specialized organizations in the preparation of joint studies and in rendering technical assistance on specific issues. For example, UNCTAD, in collaboration with the Panamerican Health Organization (PAHO), is preparing a background study to identify the possibility for selected countries in the Latin American region (Colombia, Costa Rica, Cuba, Jamaica and Mexico) to export health services. Similarly, UNCTAD is collaborating with the World Tourism Organization (WTO) in joint technical assistance activities relating to tourism, as one dimension of international trade in services. Many of the studies prepared under technical assistance programmes at the regional and national level have been published. They constitute valuable sources for the analysis of national experiences and stand as a point of reference for UNCTAD's future work.

66. UNCTAD's capacity to respond effectively to requests for technical assistance on the development of services is affected by the availability of extra-budgetary resources. Although the recently established Asia and Pacific Project on "Institutional Capacities for Multilateral Trade" and the project for Latin America and the Caribbean (LATINTRADE) have components on trade in services, UNDP resources for technical cooperation in services are unlikely to increase further, given that Programme's overall resource constraints. In view of the interest of, and demand from, developing countries in the area of services, it is necessary to explore alternative sources of funding to complement that of UNDP. The Standing Committee might wish to propose that the Board invite the international community of donors and individual countries to provide resources to assist developing countries in strengthening the competitiveness of their service sectors. Such assistance could focus on the following three main areas of technical cooperation: (a) policy options for the development of competitive services, following the lines of the work programme; (b) more sectoral or issue-specific training programmes involving seminars, workshops and in-job training addressing the needs of both public and private sectors; and (c) publication and dissemination of relevant materials presenting experiences at broad national and sectoral levels.

IX. GROUP OF EXPERTS

67. When reviewing the provisional agenda for the second session of the Standing Committee, the Trade and Development Board decided to refer the issue of the possible convening of an expert group or groups to the Standing Committee at its present session.

68. During the discussions at the Standing Committee's first session, certain delegations had suggested that in order "to examine ways of enhancing access to and use of information networks and distribution channels" (item 3 (e) of the work programme) the Committee could benefit from the guidance of technical experts, in the form of an intergovernmental Group of Experts.

69. The inclusion of this item arises from the perception that developing countries' trade, and their service exports in particular, suffers from lack of access to information networks and distribution channels. The importance of this issue to developing countries was recognized at the Uruguay Round Montreal Ministerial Review in 1988, and it has found its way into Article IV of the draft GATS, which provides for the possibility of facilitating the increased participation of developing countries in world trade in services through negotiated specific commitments relating to the improvement of their access to distribution channels and information networks. Article XIX:2 allows developing

countries to attach such access as conditions for making market access available to foreign service suppliers. These objectives have been restated in the Cartagena Commitment.

70. Much has been written about the phenomena of "networking" and "networked economy". The *UNCTAD VIII Analytical Report by the UNCTAD secretariat to the Conference* (TD/358) described the situation:

> In recent years, the world service markets have increasingly come to be characterized by vertical integration and networking, i.e. the setting-up of systematic linkages among activities within the enterprise, between associated firms and with suppliers and customers. Through networking various service providers coordinate their activities in order to attain economies of scale and scope, to create value added, and to compete against the networks of competitors. While facilitating greater efficiency in the provision of services and often allowing small and remote providers to benefit from electronic distribution networks, networking reduces the incidence of arms-length relations and can also result in greater barriers to entry. Access to information networks involves much more than just "plugging in" but is closely linked to access to and transfer of technology. The competitive position of developing-country firms would be greatly enhanced by the development of public networks (for example public R & D networks along the lines of ESPRIT in Europe) at the world level. (para. 632)

71. Effective pursuit of the objective of enhanced access to and use of information networks and distribution channels requires a clearer understanding of the inherent problems. Some of the aspects requiring clarification include: the difference between access to information and access for information; participation in a network as opposed to mere access to it; the blurring of the distinction between information networks and distribution channels as in trade in services where the information network often becomes the distribution channel; and, the possibilities of discriminatory behaviour contrasted with the potential equalizing effects of networks.

72. Specific examples of access to networks playing a vital role in terms of participation in international trade in services include: (a) tourism, where firms with computerized information and reservation networks (e.g. hotel chains and travel agencies) may enjoy a dominant share of world tourism revenue; (b) the air transport sector, where participation in computerized reservation systems is a prerequisite to competing in international markets; (c) maritime and land transport, where participation in information networks is necessary to deliver goods competitively and safely; (d) the financial services sector, where global electronic networks execute orders in the equity and money markets that are the backbone of the financial sector; and (e) the export of a variety of labour-intensive "back-office" services (including a variety of computer-related services), where developing countries may have a comparative advantage.

73. Access to distribution networks is likewise important for trade in computer software. Information and reservation networks serve as distribution channels in that they are the instrument for delivering and receiving services. The control of distribution channels in a more traditional sense, i.e. the ownership of outlets by producers, remains crucial in many services. This is notably so for "media products", where they enable producers not only to ensure a market for their products but also to control the timing of the presentation of films, for example - a vital component of the value of the production.

74. Attempts have been made to categorize networks. For example, some studies classify networks as intracorporate, transcorporate and intercorporate. **Intracorporate networks** are in-house networks such as satellite-based networks allowing for direct integration between technical centres and production facilities and networks connecting the back offices of banks. **Transcorporate networks** link a company with its suppliers, customers and partners. They

contribute to a reduction in paper for transactions, better adaptation of products to demand fluctuations, as well as higher quality and better inventory management. The links between the automobile industry and part suppliers are a typical example. **Intercorporate networks** rest on corporate alliances of all sorts. Straightforward mergers may not be the most efficient way to establish strategic convergence in a highly volatile and risky environment. The sharing of information on cross-licensing deals, R & D consortia, cooperation towards well-defined objectives within joint ventures, and creating synergies among products within cross-distribution management fall into this category.

75. A spectrum of problems have been identified as impeding access to networks. Access can be hindered by the discriminatory or anti-competitive behaviour of a proprietary network. In the airline industry, Computerized Reservation Systems (CRSs) have come under particular scrutiny in this respect, provoking special legislation both in the European Community and in the United States, as well as an ICAO Code of Conduct. Access to distribution channels has been an issue in the Strategic Impediments Initiative negotiations between the United States and Japan. A variety of anti-competitive practices identified in the CRS context are probably present in other services, such as exclusion of foreigners or accepting their participation under discriminatory conditions, e.g. with respect to prices or setting other economic conditions. Some of the problems faced by developing countries arise from their own handicaps, such as inadequate telecommunications and informatics infrastructure or the lack of training on how to use the network more effectively to their advantage. A better understanding of these factors could assist developing countries in negotiating favourable conditions of access to and participation in information networks and distribution channels.

76. An Intergovernmental Group of Experts could be charged with the task of setting out a detailed study programme to examine ways of enhancing access to and use of information networks and distribution channels. It could thus provide guidance to the Committee in dealing with this item. In order to fulfil its function, such an Expert Group would ideally include private sector operators of such networks as well as government regulators, experts from relevant international organizations and academics.

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Standing Committee on Developing Services Sectors:
Fostering Competitive Services Sectors
in Developing Countries
Second session
Item 4 (ii) of the provisional agenda

THE COLLECTION AND DISSEMINATION OF INFORMATION ON MEASURES, INCLUDING LAWS AND REGULATIONS, AFFECTING THE ACCESS OF SERVICES AND SERVICE SUPPLIERS TO WORLD MARKETS, INCLUDING CONSIDERATION OF THE POSSIBILITY OF SETTING UP A COMPUTERIZED DATABASE

(Item 2 (b) of the Work programme)

Database on measures affecting service trade

Note by the UNCTAD secretariat

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Introduction

A. Mandate

1. Item 2 (b) of its Work Programme requests the Standing Committee on Developing Service Sectors to *"collect and disseminate information on measures, including laws and regulations, affecting the access of services and service suppliers to world markets, including a study of the possibility of setting up a computerized database in this regard, with a view to enhancing the service exports of developing countries."*

2. The UNCTAD secretariat has examined the feasibility of setting up a computerized database on measures affecting service trade. A pilot version of the database is being prepared for demonstration to delegations during the second session of the Standing Committee. This report outlines the approach taken to the database and summarizes the preliminary findings of the feasibility study.

B. Background

3. The Seventh United Nations Conference on Trade and Development called for intensified work on services, especially in relation to trade and technology issues. It also requested the Secretary-General of UNCTAD to provide technical assistance to developing countries in order to enable them to participate more effectively in the Uruguay Round of multilateral trade negotiations, and to support the negotiating process as a whole. As part of technical assistance projects to support the participation of developing countries in the services negotiations, UNCTAD conducted a number of studies, focusing on specific sectors and countries, with a view to identifying policy issues and the interests of developing-country service producers with a view to enhancing their participation in international trade. These studies, of necessity, went into considerable detail on measures that have an impact on service trade. No systematic study of the regulatory environment in the service sector has been directly undertaken by UNCTAD so far, however.

4. In the context of the technical assistance activities undertaken by UNCTAD with respect to the participation of developing countries in the Uruguay Round, delegations have raised the problem of formulating requests for negotiations on specific sectoral and subsectoral commitments to be included in the schedules annexed to the draft General Agreement on Trade in Services (GATS). These difficulties stem primarily from a lack of adequate information regarding the regulatory structure of other countries and problems in assessing the impact of such measures on actual or potential exports of services. Unlike many developed countries, developing countries seldom had access to detailed information from transnational corporations (TNCs) identifying measures affecting their ability to do business in foreign markets. They have thus approached UNCTAD for assistance in this respect. Although laws and regulations are published, a lack of sectoral specificity complicates the identification task. In many cases, measures dealing with such broad areas as immigration, for example, may affect trade in specific service sectors. The problem of compiling information and devising appropriate mechanisms to facilitate its dissemination is evident. Private-sector entities in developing countries often lack information regarding opportunities to export their services, and may be unable to take full advantage of them because of lack of availability of information on standards and other requirements in target markets. Lack of access to information hampers identifying niches in specific markets and developing capacities with greater focus.

5. Furthermore, although regulatory information is more readily available for some sectors than others, no comprehensive database is available for use by developing countries seeking comparable data with respect to a large number of sectors and countries. In order to facilitate cross-sectoral and cross-country comparisons on the various regulatory measures employed in services, such a database would be helpful. The information required by developing countries would also need to respond to a number of parameters with specific relevance to trade negotiations. For example, the question of the mode of delivery of a service affected by a particular measure is a crucial parameter in such a context. Available regulatory information seldom indicates the mode of delivery. Even when it does, the understanding of the issue may not coincide with the definitions established in the context of negotiating a General Agreement on Trade in Services.[1]

C. Major users and uses of the database

6. The considerations outlined above point to the need for a database offering information on measures affecting trade in services. Such a database would promote transparency in the services sector and be of considerable use to at least four specific constituencies: namely negotiators, private-sector service providers, policy-makers and academic researchers.

7. For trade negotiators, particularly those from developing countries, having regulatory information available at a national or a sectoral level would facilitate the formulation of requests and the assessment of offers made by countries in the negotiating process. Not only would the database do this but it could also provide negotiators with information regarding the conformity of certain measures to multilateral trade principles, such as market access, national treatment, and most-favoured-nation (MFN) treatment.

8. For service providers in the private sector, the database would provide information support for studying potential markets for exports, barriers to entry, establishment, and operation. The information included in the database on investment, licensing authorities and procedures, fiscal measures, recognition of professional qualifications, and restrictions related to the movement of persons would be valuable not only in identifying export opportunities but also in guiding service providers in the procedures involved in the export of services.

9. For policy-makers, the database would function as a reference tool containing examples of regulatory frameworks in the service sector applied by other countries, thus aiding in the formulation and comparison of various options for regulating a specific service activity. This would have particular relevance in the context of changes in regulatory regimes necessitated by the impending liberalization of international services trade as well as by transformations in technology and evolving national economic policies. Furthermore, regulatory information on other countries could facilitate the identification of export opportunities for domestic service providers and the formulation of appropriate export promotion policies.

10. The database also has applications for analytical and research purposes. With its facilities for ranking and extracting data according to selected parameters, the database would aid in the examination of regulatory situations in specific countries and sectors, as well as in making inferences about regulatory patterns and their relation to the stage of development of countries, regional integration arrangements and their effect on service transactions.

11. In sum, the proposed database could aid considerably in enhancing the capacity of user countries to negotiate terms of trade and to pursue service exports to world markets, as well as policy-making at the national level. Thereby a deeper analytical understanding could be gained of the services sector and the role of regulation therein. It would also contribute substantially to the furthering of transparency in services trade at the international level.

D. UNCTAD's experience with databases

12. UNCTAD has accumulated considerable expertise in the compilation and dissemination of information through various systems. The Economic Time-Series databank (ETS), set up in 1977, has made available information at a national level from various international organizations (e.g. UNCTAD, IMF, World Bank, OECD, UNSTAT, UNESCO and FAO) concerning several time series of economic variables, including those on the balance-of-payments, debt, official financial flows, national accounts statistics, labour statistics, prices, exchange rates and external trade from as early as 1950. The ETS has also provided access to data on specific exports, imports, and re-exports from one country to partner countries on a specific commodity. In trade in commodities, UNCTAD has built up a number of databases specializing in various kinds of information. UNCTAD initiated the development of the Automated System for Customs Data (ASYCUDA) in 1984, which has enabled the computerization of customs declarations, accounting procedures, import and export licensing, and trade statistics in several developing countries. The Debt Management and Financial Analysis System (DMFAS), developed in UNCTAD beginning in 1978, contains legal and administrative advice, book-keeping suggestions, a debt-monitoring system, and a debt projection and balance-of-payments linkage system. UNCTAD's Trade Analysis and Information System (TRAINS) provides policy-makers and economic operators engaged in exporting with information on trade control measures, trade flows and potential importers, along with other trade data for selected products and markets. The Software for Market and Restrictions on Trade (SMART) information system provides market-specific information on restrictions on trade in goods. It also allows simulations to be carried out of the effects of liberalization of tariffs and non-tariff barriers. The GREENTRADE information system, currently under development, will list environmental measures which have an impact on trade. UNCTAD has so far not been involved in developing specific databases on trade in services. However, it does provide logistic support to shipping operations through such systems as the Advanced Cargo Information System (ACIS). UNCTAD's expertise in data management in these related fields should be of great value in setting up the proposed database.

E. Issues specific to services

13. The nature and scope of regulations which affect service trade are rather different from those affecting trade in goods. Thus building a database on measures specific to trade in services raises issues that are distinct to this sector. First, whether they take the form of a tariff or of a non-tariff barrier, barriers to goods are seen as exceptions to the hypothetical general rule of the free flow of goods. In contrast, in the service sector, regulation is the rule rather than the exception. Regulations can have a variety of objectives and effects. Some, such as those covering accreditation procedures and recognition of qualifications, often have as their explicit intent the safeguarding of standards with respect to the quality of the professional service rendered. Others, such as the economic-needs test, usually has as an objective the protection of the domestic labour market. There are regulations motivated by national security, cultural, prudential, and other considerations. For all measures affecting trade in services, the specific extent and nature of their

impact may vary according to the service sector involved and the mode of delivery of the service in question.

14. There are instances where regulations pertaining to one sector may have a substantial impact on trade in another sector. For example, regulations on national health insurance coverage may have a strong impact on trade in medical services. Immigration laws which regulate the entry of persons into a country obviously affect the temporary movement of service providers, but may have greater or lesser impact on trade in certain sectors. Concerning the mobility of persons, restriction is usually the rule and the permission to enter is often granted under specified conditions as an exemption from the general application of the regulation. In other words, in many cases the database cannot identify barriers *per se* but rather may serve to identify specific liberalization measures. The scope of a database on measures affecting services trade could be much larger and far more heterogeneous than in the case of goods trade. Moreover, in designing the database, adequate cognizance should be taken of considerations specific to regulation in the services sector. Therefore, although considerable guidance could be gained from the databases developed by UNCTAD on goods trade, the database on services cannot be modelled too closely on them. Among the information systems in UNCTAD, GREENTRADE comes closest to the considerations relevant for a services database. Some of the ways of organizing information in that system could be applied to the design of the proposed database on measures affecting trade in services.

I. INPUTS AND MAIN FEATURES

A. Inputs

15. The essential inputs into the database would include the following:[2]

- The country which imposes the measure;
- The service sector affected by the measure;
- The kind of measure imposed;
- A detailed description of the measure;
- The regulatory instrument which contains the measure;
- The source of information on the measure;
- The mode of delivery affected by the measure; and
- The conformity of the measure to multilateral trade principles such as market access, national treatment, MFN treatment, and others.

16. In addition, the database would allow for insertion of remarks or annotations by the user. A format for the supply of inputs has been proposed in order to serve as guideline in compiling data (see Box 1). Sample entries have also been given to serve as models (Box 2 contains a sample entry while annex III lists some sample records).

B. Main features

17. For ease of display of information on the initial screen and to facilitate accessing data, abbreviations of many items of information will be used. Therefore country codes, service-sector codes, and measures codes will be used. The code of the International Organization for Standardization (ISO) provides such a system of abbreviation for country names (e.g. AU for Australia). The Central Product Classification (CPC) number (e.g. 862 for accounting, auditing

and bookkeeping services) could be used for service sectors. No standardized coding system exists for measures affecting trade in services, but as the work on the proposed database will be a pioneering effort in this area, a classification system would need to be devised for grouping together similar types of measures affecting service trade.[3] Since the database is expected to be used for accessing information for policy-making as well as analyses in the context of international negotiations on trade in services, the classification of service activities developed as part of the Uruguay Round negotiations on trade in services should also be an element in the database.[4] The conformity of measures with such principles as market access, national treatment, and MFN treatment could be a useful criterion in accessing information from the database in the context of negotiations.

18. The combination of country code, sector code, mode of delivery and measure code would constitute a unique entry. Using this combination, the following inputs would be recorded at the time data is entered: regulation, source, GATS classification number, and the conformity of the measure in relation to multilateral principles of trade (market access, national treatment, MFN, and other).

19. The initial screen of the information system (see annex II) would display the following data elements: country code, sector code (CPC), GATS classification number, mode of delivery, measure code, detailed description of measure, regulation, source, conformity to trade principles (market access, national treatment, MFN, other), and remarks. The regulation, source, trade principles (the latter comprising four columns) and remarks columns would indicate 'X' or '-' depending on availability of further information. A window on the top right of the screen would display in full the information contained in the particular cell where the cursor rests. The user can enlarge information in any row, view details for any column containing an 'X', or print selected records.

Box 1
UNCTAD Database on Measures Affecting Service Trade
Format for Supplying Information

Country: Service:[a]

CPC No. GATS List No.
Regulation:

Full Publication Details:[b]

1. Article:
2. Summary:
3. Mode of Delivery Affected:[c]
4. Nature of Impact: ☐ Affects Market Access ☐ Affects National Treatment ☐ Affects MFN Treatment ☐ Other:
5. Other remarks or annotations:

[a] In the case of general regulations which apply to all service transactions, please write "All".

[b] Please attach a photocopy of the regulation, if possible, so that a library of relevant regulations can be built up in UNCTAD for reference.

[c] 1. Cross-border; 2. Consumption abroad; 3. Commercial presence; and 4. Personal mobility.

Box 2
A Sample Entry for the Database
UNCTAD Database on Measures Affecting Service Trade
Format for Supplying Information

Country: United States of America Service[a]: Hospital Services

CPC No. 9311 GATS List No: 8 A

Regulation: Regulations of the government entitlement programmes: Medicare and Medicaid

Full publication details[b]: David C. Warner, *Mexican Provision of Health and Human Services to American Citizens: Barriers and Opportunities*, Working Paper No. 21 (Washington, D.C.: Commission for the Study of International Migration and Co-operative Economic Development, 1990).

1. Article:

2. Summary:

In general, the government entitlement programmes (Medicare and Medicaid) do not reimburse for care given in another country. Medicare can help pay for care in a qualified Canadian or Mexican hospital only under three conditions:

1. The patient is in the United States when an emergency occurs and a Canadian or Mexican hospital is closer than the nearest U.S. hospital that can provide the emergency care services the patient needs.
2. The patient lives in the United States and a Canadian or Mexican hospital is closer to his home than the nearest U.S. hospital that can provide the care he needs, regardless of whether or not an emergency exists.
3. The patient is in Canada traveling by the most direct route to or from Alaska and another state and an emergency occurs that requires him to be admitted to a Canadian hospital.

3. Mode of delivery affected:[c] 2

4. Nature of impact:

[X] Affects Market Access
[ ] Affects MFN Treatment
[ ] Affects National Treatment
[ ] Other: .....

5. Other remarks or annotations:

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[a] In the case of general regulations which apply to all service transactions, please write "All".

[b] Please attach a photocopy of the regulation, if possible, so that a library of relevant regulations can be built up in UNCTAD for reference.

[c] 1. Cross-border; 2. Consumption abroad; 3. Commercial presence; and 4. Personal mobility.

II. ACCESSING AND USING DATA

20. The proposed database would allow the data to be accessed in a variety of ways. The user could rank data according to any one of the four parameters which constitute the unique entry, i.e. country, sector, mode of delivery or type of measure. This would enable comparisons to be made and a preliminary overview of similarities identified. For example, a user ranking data according to type of measure can see which countries use similar measures and which sectors are affected by them. This would guide the specification and selection of criteria for accessing more detailed or narrowed-down information.

21. The user could select data by country, sector, measure and mode of delivery. Such selection lets the user focus on specific areas of information. For example, if the user selects "Australia", and "Accounting Services", he/she will be able to see the regulatory profile of the accounting services sector in Australia. This would show the regulatory strategies in the sector, the modes of delivery which are predominantly affected, and the potential modes for exporting services to that market. A comparison could then be made with other similar profiles for other countries or sectors. Such comparisons are useful in making inferences about the service policies and regulatory strategies of different countries, and their impact on service trade. Such information may be valuable to negotiators and private-sector service suppliers seeking to penetrate world markets. A negotiator may usefully assess the offers made by countries and formulate requests in areas of interest to his or her country's service providers by accessing the regulatory profile of a country with respect to the service sector in question. Potential service exporters may extract information on the regulatory structure of possible markets in their sector. They can then choose particular markets or niches which offer fewer barriers to entry and operation.

22. Similarly, information may be extracted showing all countries which use a particular measure and which sectors are affected by that measure – for example, which countries specify ratios for foreign and local workers and which sectors would be affected by this measure. Such information may be useful for analysts in understanding the use of specific measures, and in investigating whether there are patterns. For example, is the use of certain regulatory strategies related to the stage of development or the overall economic policies of a country? Furthermore, the preponderant use of some measures in some sectors may also indicate the relative usefulness (or otherwise) of specific regulatory strategies in particular sectors. This could be particularly relevant in the context of technological change, new situations concerning competition, etc. The information on preferential treatment accorded to service providers from certain countries through bilateral and regional agreements would also be valuable for analysts and policy-makers.

23. Ranking and extracting data according to the country, service sector, measure type and mode of delivery also provides the policy-maker with a directory of examples of regulatory strategies. He may be able to evaluate these measures on the basis of their potential impact on trade or on the basis of other information regarding the experience of countries using a certain measure. Once again, in the context of developing countries whose service sectors are undergoing changes in terms of technological transformation as well as competitive environment, the database may serve as a tool for learning how other countries have dealt with similar situations before. For example, issues related to transborder dataflows, computerized reservation systems, foreign direct investment, and market practices which have a restrictive impact on competition

could all be instances where the database could provide the policy-maker with information on regulations which can serve as guidelines in formulating new national regulatory policies.

III. MANAGING DATA

A. Main issues

24. The ubiquity of regulation in services poses enormous problems with respect to the scope and comprehensiveness of a database. Each service activity may be regulated by a variety of instruments. Some of them may take the form of regulations which apply to the sector as a whole, while others cover only a part of the sector. Certain measures cover the delivery of all services by a specific mode of delivery. Immigration and investment laws would be cases in point.

25. The situation is further complicated by the wide variety of regulatory instruments bearing on services. They include national legislation, provincial legislation, and the self-regulations of private bodies. In contrast to trade in goods, where tariffs and non-tariff barriers are usually clearly identifiable measures, for services it is difficult to compare regulatory instruments directly with one another. First it is necessary to identify the kind of measures under the particular regulatory instrument and then to compare them with similar kinds of measures used elsewhere by sector or by country.

B. Classification of measures

26. These considerations point to the need for a system for classifying measures affecting service trade, in order to make access to the data easy. Measures by types would indicate a preliminary view of the regulatory structure in a particular sector or country. Such an approach would also make data comparable across countries as well as sectors. However, devising such a system poses a challenge. The measure types must be applicable to a large majority of sectors and should be able to contain most of the important regulatory measures in each of those sectors. In other words, measure types should be able to accommodate general measures which apply to all sectors as well as sector-specific measures.

27. A classification system involves parameters for grouping some measures together; this has implications for the kind of selections possible in the database. For the proposed database, an important parameter would be the specific modes of delivery affected by a measure, based on the only internationally agreed definition of "trade in services" reached in the context of the Uruguay Round negotiations.[5] As conditional offers are made by countries according to modes of delivery, use of the same parameter would enhance the usefulness of the database in assessing offers and in formulating requests. However, sometimes the same measure may affect more than one mode of delivery. For example, local-content requirements may affect cross-border delivery or permanent presence or even the mobility of personnel in cases where employment of foreigners is linked to local-content requirements on the part of the employing firm or project. Therefore, rather than using mode of delivery as a principle for classifying measures, it may be easier to enter it as a separate input. A separate classification of measures by a well-defined typology would, of course, facilitate extraction of data in a more focused way.

Box 3
Classification of Measures: An Example

The same article in a regulatory instrument may contain a number of measures. For example, as conditions for granting an entertainment visa for performing in a film or television production not subsidized by a government in Australia, two criteria need to be met. First, the Ministry must be satisfied that Australians have been afforded a reasonable opportunity to participate in all stages of production. Second, the foreign investment in the production, or the private investment guaranteed against the foreign returns by a distributor, must be greater than the amount to be expended on entertainers sponsored for entry. These two conditions constitute two different kinds of measures: the first is a local participation requirement or an encouragement to use local service suppliers; the second is a net returns requirement. Both measures are comparable to similar measures in other sectors. For the database, this would mean that conditions which constitute the subclause of an article in the Migration Rules of Australia need to be classified as two separate measures.

Source: Migration Rules (Amendment), Statutory Rules 1991, No. 285, art. 25.1, *Commonwealth of Australia Gazette*, 17 September 1991.

28. There are many possible ways of classifying measures, and further study would be necessary before a classification system can be finalized. UNCTAD has devised a coding system for trade control measures, elements of which may apply to regulations affecting service trade.[6] UNCTAD's studies on individual service sectors have also identified a number of barriers to trade in individual service sectors. However, categories which would apply to most of the sectors would need to be identified in order to classify measures.

29. The Ernst and Young study conducted for the European Commission identified a number of obstacles to trade in services; they have been classified under six categories: set-up, operating, fiscal, financial, labour, and technical.[7] The information in that database is often provided by private sector entities reporting on perceived obstacles in other markets. It would be difficult to apply such a categorization directly to a database which deals with regulatory instruments, and indeed measures and obstacles are not necessarily identical.

30. Guidelines provided by article XVI of the draft GATS on the question of barriers to market access suggest categories such as:

- limitations on the number of service providers;
- limitations on the total value of service transactions or assets;
- limitations on the total number of service operations or the total quantity of service output;
- limitations on the total number of natural persons who may be employed in a particular service sector;
- measures which require specific types of legal entity or joint venture; and
- limitations on the participation of foreign capital.[8]

31. As one of the objectives of the database is to facilitate the access of developing-country service providers to world markets, these guidelines are useful in classifying measures affecting market access. In the draft final act of GATS, in addition to provisions of market access, there are provisions on national treatment (article XVII), government procurement (article XIII), payments and transfers (article XI), monopolies and exclusive service providers (article VIII), recognition (article (VII), additional commitments (article XIX) and regulation (article VI). These are also relevant for the database. For the purposes of demonstration, the UNCTAD secretariat is drawing up a list of measures for use in the prototype database, taking into account these considerations. Future work on building the database would involve the development of a system of classification for measures affecting trade in services. The use of an intelligent and efficient classification would appear to be extremely important in rendering the database manageable and user-friendly.

C. Other issues

32. The classification of service sectors poses less difficulties than the classification of measures as for the latter there is no established system of classification. The Central Product Classification (CPC) provides a detailed classification of service sectors and activities.[9] It is a numbered system which breaks down to the five-digit level in terms of disaggregation. However, for the database to be of use in the context of multilateral negotiations on services, the classification of service activities proposed in GATS need to be taken into account.[10] This system has three levels of disaggregation, and uses a combination of one number and two letters of the alphabet—e.g. 1 A b refers to Accounting, Auditing and Bookkeeping Services. The GATS system is not fully consistent with the CPC, although cross referencing with the CPC had been proposed. For instance, nursing (CPC 93191) which figures as part of other human health services in CPC (9319) appears in the GATS classification as 1 A j, as part of professional services; all other items under CPC 9319 are classified in the GATS classification under 8 B. Such incompatibilities mean that both codes need to be entered separately. The user would be able to rank the information according to either of these classificatory systems. This would increase the flexibility of the database in making information easily accessible for different purposes.

33. Another aspect of the management of data concerns the assessment of the conformity of measures to established trade principles. As mentioned earlier, identification by concepts inherent to multilateral negotiations would be useful, as these parameters have been used in qualifications made by countries as part of their conditional offers in the Uruguay Round. Annotations as to market access, national treatment, and MFN treatment would need to be included as part of the information on measures. For several measures the effect of the measure on market access and on national treatment may difficult to distinguish. The structure of the prototype database, which allows an 'X' or '-' to be entered against market access, national treatment and MFN, also leaves a fourth column in which to enter a description or comment on the effect of the measure in question. The inclusion of a data element entitled "Remarks", where the user can add his/her annotations on the measure will customize the database to some extent, and thus enhance its value for the user. The initial screen will display an 'X' to indicate the presence of this data element. The full text will appear if the user requests "details". The "enlarged" screen will display all the information that pertains to a record in a user-friendly way and without using codes.

IV. VIABILITY OF THE DATABASE: ANTICIPATED DIFFICULTIES

34. This chapter addresses some problems of a practical nature anticipated in setting up the database and compiling data. The issues discussed here should be viewed in conjunction with the aspects of data management described in the previous chapter, in order to get an overall picture of anticipated difficulties.

A. Scope

35. The main difficulty with respect to the compilation of data relates to the broad scope of the database. A comprehensive compilation of "information on measures, including laws and regulations, affecting the access of services and service suppliers to world markets" would require an extraordinarily large investment in terms of resources, effort and time. The ubiquity and complexity of regulations in the service sector make it so. Consulting regulatory instruments in each sector in each country would be a daunting task and one which may be difficult to carry out in the near future, which has implications for the short- and medium-term usefulness of the database.

B. Compilation of information

36. Obtaining details of regulatory instruments from each country would be the first stage. Even if special arrangements were made to make such information available to UNCTAD, the consultation on regulations and the ordering of data in the appropriate format for the database would take considerable time. In many sectors regulations go back to the last century or even earlier; in several cases, regulatory instruments refer to earlier instruments in a labyrinth-like regression. As the regulatory situation in the service sector is complex, many countries may need guidance in identifying their own appropriate regulatory instruments and in rendering the data available for inclusion in the database. Without a constant and efficient interface between UNCTAD and the focal points in individual countries, the collection of data may encounter serious difficulties. Further practical problems can also be envisaged with respect to languages/translation of national legislation and other regulatory instruments.

C. Self-regulation by private bodies

37. In many professional services, such as accountancy, legal services and medical services, the State often delegates the responsibilities of licensing and accreditation to self-regulating private bodies. The self-regulation of the private body may have the same force as national legislation in relation to trade in particular service. The database would need to address such self-regulation, as it constitutes valuable information on the recognition of professional qualifications, local examination requirements, local association requirements, barriers to foreigners acquiring local qualifications, etc. In addition, self-regulation can extend into several aspects of practice, which may have an impact on trade. The corpus of such self-regulation is often very large in the case of certain professional services. This raises the question as to how far the database should go in covering such self-regulation, and to what degree of detail. For example, should it contain details on qualifications and experience required for practice in a particular profession, or merely indicate the licensing authority and the general nature of licensing requirements? Such questions have practical implications for the design of the database.

D. Other issues

38. Immigration laws, despite their potential impact on the delivery of services through the movement of persons, are generally not linked to specific service sectors.[11] Such laws sometimes have sections on conditions of entry to deliver a particular service. Should the database merely record those sector-specific clauses in migration laws, or should it address the entire corpus of job-related provisions in immigration laws?

39. Finally, the database would also need to make adequate arrangements for the updating of data. Regulations in services change rapidly, especially in the context of recent moves towards the liberalization of service trade, technological changes that have necessitated major changes in regulation, and regional and bilateral agreements. Gathering information on recent changes may not be easy, especially if changes in the self-regulation of private bodies and provincial legislation are also taken into account. Options would need to be identified to keep the database up-to-date and viable.

V. VIABILITY OF THE DATABASE: MAJOR OPTIONS

40. This chapter will draw to the attention of the Committee some major options for rendering the database viable. These options respond to the problems outlined in chapter IV. As one of the principal difficulties arises from the broad scope of the database, most of the options outlined here imply a reduction in scope. Any such reduction should make possible more adequate coverage of the areas actually included, as well as lead to enhanced reliability of information, and greater viability in the collection and updating of data.

A. Limitation of country coverage

41. The first option involves a limitation of the country coverage. While eventually the database would cover all countries, the Committee may wish to consider limiting the domain of information in the initial database to a selection of countries which constitute major possible markets for services exports from developing countries. Since one of the objectives of the database is to facilitate the access of developing country service exporters to world markets, the collection of comprehensive information on major markets may be a useful starting point. This option would ease some of the difficulties in the compilation of data in the beginning, as the number of regulatory instruments covered would be restricted by the number of countries selected for inclusion. Furthermore, information on regulations is more easily available for some developed market-economy countries forming some of the potential markets for exports of certain services from developing countries. Covering such countries first would also allow time for setting up appropriate mechanisms for the collection of data from other countries. The experience of data collection from countries equipped to supply information readily would also enable the structure of the database to be fine-tuned before its coverage is extended to all countries. Whatever arrangements the Governments concerned might be able to make to assist in the collection of data on laws and regulations would have a strong bearing on this question.

42. However, confining the coverage of the database to a limited number of countries might have long-term repercussions for the usefulness of the database. Lack of adequate information on developing countries may restrict the usefulness of the database in supporting service trade among developing countries, and in

facilitating investment flows in the service sector towards developing countries. It would also restrict the immediate usefulness of the database for the analysis of the regulatory environment of developing countries. This consideration has importance in rethinking regulatory strategies and in exploring possibilities of regional integration and economic cooperation among developing countries in the services sector.

43. On the basis of the above considerations, it nevertheless seems likely that some initial limitation of the country coverage in the database, along with a time-table for expanding it, cannot be ruled out as an option. This would mean establishing focal points in the countries to be covered by the database and giving them adequate guidance on the timing and form of data compilation needed. Such a start would make the database operational in the short term.

B. Limitation of sector coverage

44. Another way of coping with the broad scope of the database at the initial stage would be to limit it in terms of sectoral coverage. The Committee may wish to consider choosing sectors of particular export interest to developing countries and providing detailed information on them. This could function as a useful learning experience and facilitate work on other sectors when the coverage of the database is extended. More detailed coverage of selected sectors would also enhance the usefulness of the database for analytical case studies of sectors; it would likewise strengthen the negotiating and policy-making capacity of developing countries in those sectors. Detailed information on measures affecting trade in service sectors of interest to them would assist developing countries in making requests and in assessing offers in the negotiating process. It could also help in focusing on those sectors where structured information is least available at present with respect to measures affecting trade in services.

45. The Committee may wish to consider a time frame for the inclusion of specific sectors for coverage by the database. This frame could be revised periodically to take account of the experience in data collection as well as any possible changes in priorities. Regulations which would affect all service sectors would, however, need to be included in the database at the very beginning, as such information is crucial for obtaining a comprehensive profile of barriers to entry or practice in a target market.

C. Other options

46. Two other options merit consideration. The first concerns the coverage of the self-regulation of private bodies concerned with professional services. As the corpus is very large, it might be useful to confine the coverage to the more important professional services traded. Furthermore, the extent of detail that could be provided on such self-regulation might also need some delimitation. One option would be to include the licensing or accrediting authority, and the kinds of requirements which the body stipulates before granting permission to practice. These would include local qualifications, local examinations, reciprocity arrangements, and requirements of prior experience, among others. While the database could indicate these measures, it might be too cumbersome to collect greater details of the kinds of qualifications recognized or the specific numbers of years of work experience required for particular professions. The inclusion of such information could affect the manageability of the database and make it difficult to up-date information, as such specific requirements change often.

47. Finally, the sources of information on measures used in the database need to be considered. Ideally, the regulatory instruments could be directly consulted and summaries made from them regarding each of the measures. However, this would require adequate resources in terms of data collection. The question of languages would have to be solved as the texts of many laws and regulations may not have been translated into working languages of the United Nations. The Committee may wish to consider the use of synthetic information on regulations in individual countries or sectors for use in the database. The prototype database includes information on regulations contained in the reservations made by countries in the Uruguay Round negotiations on services. Some countries publish information in condensed form regarding their service sectors. The Australian Department of Foreign Affairs and Trade, for example, published in 1989 a volume entitled *Australian Traded Services and the Uruguay Round*, which, *inter alia*, provides information on the principal regulatory instruments and measures which have an impact on foreign service suppliers. Studies made by international organizations and agencies could also yield valuable information for the database. The work of UNCTC on foreign direct investment legislation, OECD inventories of barriers to trade in tourism and shipping and the reservations to various OECD instruments, and UNCTAD's own sources of information on measures in certain sectors could be used in the database. The source of information would need to be clearly indicated in the database.

48. Another source of such synthetic information would be the existing databases themselves. ILO's Natlex database, for example, has relevant information on employment and welfare legislation; although it provides an annotated bibliography of regulatory instruments this is without detailed information on the regulations themselves. The European Commission's database on obstacles to trade in services contains detailed information on perceived barriers, but does not exclusively rely on regulations as sources. It may be important to explore the possibility of collaborating with other institutions that collect relevant information, so that any duplication of work can be avoided. The possibility of networking with such databases in order to provide and access information in a more efficient and cost-effective manner might also be considered.

VI. CONCLUSIONS AND RECOMMENDATIONS

49. This chapter summarizes the conclusions of the feasibility study and draws the Committee's attention to some recommendations regarding future work on such a database.

A. Conclusions

50. There is a pronounced need for a database on measures affecting trade in services, and as it would contribute substantially to the promotion of transparency with respect to the regulatory environment in the services sector. The database would be of considerable value to developing country negotiators in making requests and assessing offers, to service exporters from the private sector in identifying potential markets and procedures of entry and practice, to policy-makers in reviewing the regulatory experience of other countries and in comparing regulatory options, and to researchers for analysing in-depth the regulatory structures in specific service sectors and countries. UNCTAD's long-standing involvement with issues related to trade in services, its experience in providing technical assistance to developing countries in multilateral trade

negotiations, and its expertise in developing databases on trade measures affecting goods trade, would be of great value in developing the proposed database.

51. Adequate cognizance would have to be taken of the specificity of the regulatory situation in services where, unlike goods trade, regulation appears as the norm. The ubiquity and complexity of regulations in the service sector pose special challenges for the database in terms of classification and management of data as well as in terms of coverage. The following inputs were considered essential for the database:

- The country which imposes the measure;
- The service sector affected by the measure;
- The kind of measure imposed;
- A detailed description of the measure;
- The regulatory instrument which contains the measure;
- The source of information on the measure;
- The mode of delivery affected by the measure; and
- The conformity of the measure with multilateral trade principles such as market access, national treatment, MFN treatment, and others.

In addition, there will be a provision for including remarks or annotations by the user. A format for supplying information and sample entries has been prepared as part of the study, in order to facilitate the supply of data for the database.

52. Devising a classification system for measures affecting services trade was seen as crucial in making the information comparable and easy to access. Such a classification would have to take into account both measures which have a general scope and those that cover specific sectors. Annotations on the conformity of measures to multilateral trade principles could help in increasing the usefulness of the database in the context of negotiations; concepts such as market access, national treatment and MFN treatment could be very useful in this respect. The prototype database presents sample entries which may require improvement in the light of guidance from the Committee and member countries.

53. A number of practical difficulties were anticipated in the compilation and updating of data. The enormous scope of the database may make comprehensive coverage of information quite problematic. The wide variety of regulatory instruments in most sectors, the coverage of measures contained in provincial legislation and self-regulation by private bodies, and language difficulties should complicate the issue even further. Difficulties were also anticipated with respect to the supply of data from countries and to the updating of information. Procedures for assessing the mode of delivery affected by the measure and the conformity of the measure to multilateral trade principles would also need to be clarified.

54. Some major options for dealing with the problems raised were also identified. As most of the difficulties pertained to the scope of the database, the options involve a reduction in the scope of the database. They are:

- Limiting the coverage of the database at the initial stage to a selected number of countries. Options in selecting countries could be: (a) those that volunteer to supply information to the database, (b) those which constitute major potential markets for service exports from developing countries, and (c) those for which regulatory information is more readily available.

- Limiting the coverage to selected sectors at the initial stage so that sectors of particular export interest to developing countries could be included on a priority basis. The Committee may wish to consider selecting those sectors for which regulatory information is more easily identifiable, but where centralized and structured ways of accessing such information do not exist.
- Information on self-regulation by private bodies could be confined to the more important professions and delimited in terms of detail, restricting it to information on licensing or accrediting authority and the kinds of requirements for permission to practice.
- Reliable secondary and synthetic sources of information on regulations could be used in the database in addition to direct reference to regulatory instruments.

B. Recommendations

55. A series of recommendations are also prepared for presentation before the Committee regarding future work on the database:

- The Committee may wish to request the active co-operation of member countries in refining the methodology used in the prototype database, and in evolving a system of classification of measures.
- There is a need for making clear intergovernmental arrangements for the compilation and supply of data. Given the extent of regulation in services and the large scope of the database, it would appear to be impossible for the UNCTAD secretariat to carry out the work of collecting data without the active collaboration of Governments, including arrangements to supply information on the regulatory structures and instruments in services in their country. Specific modalities need to be devised for the collaboration of Governments and UNCTAD. Focal points would need to be identified in capitals and mechanisms for constant and active interaction between UNCTAD and such focal points would need to be devised.
- A time-table would need to be agreed on by the Committee for the inclusion of specific countries and sectors in the database. Such a time-table should provide for adequate preparatory work and offer guidance, especially in the case of countries which may have difficulty in collecting and supplying information.
- UNCTAD could explore possibilities of collaboration with other international organizations and agencies that have collected information in this area; the work of ILO on migrant labour, IOM on immigration, WTO on tourism, UNESCO on education and professional qualifications, and OECD and the European Community on a number of services may be relevant. Information on existing databases could be provided, and the possibility of networking with them could be explored.

Notes

1. The draft final act defines trade in services as the supply of a service "(a) from the territory of one Party into the territory of any other Party; (b) in the territory of one Party to the service consumer of any other Party; (c) through the presence of service providing entities of one Party in the territory of any other Party; (d) by natural persons of one Party in the territory of any other Party." (See GATT MTN.TNC/W/FA, p. 6)

2. See Annex I for a preliminary outline of the proposed database.

3. See chapter V below for a detailed discussion on this subject.

4. See GATT MTN.GNS/W/120 for the services sectoral classification list. See also chapter V of the present paper.

5. See footnote 1.

6. UNCTAD, *Directory of Import Regimes* (UNCTAD/DMS/2(Part I).

7. For information on the Ernst and Young catalogue on barriers to trade in services, see the proceedings of the seminar on "The Impact of the Uruguay Round Services Negotiations on the Accountancy Profession", 1-2 February 1990, Vevey, Switzerland, organized by the Fédération des experts comptables européens.

8. This is a cursory summary; for details, see GATT MTN.TNC/W/FA, pp. 20-21.

9. See *Provisional Central Product Classification* (United Nations publication, Sales No. E.91.XVII.7), pp. 127-57.

10. See GATT MTN.TNC/W/120.

11. This issue, including the sectoral specificity of immigration laws, is dealt with in the background note prepared by the secretariat for discussion under agenda item 3 (h).

Annex I

UNCTAD Database on Measures Affecting Service Trade

The Work Programme established by the Standing Committee on Developing Service Sectors, at its first session in October 1992 included a decision to:

> collect and disseminate information on measures, including laws and regulations, affecting the access of services and service suppliers to world markets, including a study of the possibility of setting up a computerized database in this regard, with a view to enhancing the service exports of developing countries.

Preliminary work on preparing the database was begun in January 1993. The immediate aim is to prepare a prototype database, which can then be augmented with detailed data from various countries.

The preparation of a database on measures affecting service trade is an ambitious venture. In order to be of use to researchers as well as policy makers, the database should have summaries of the text of regulations rather than mere references to them. The data would be made available for access according to a number of parameters: the country which imposes the measures, the services affected and the modes of delivery affected, as these would appear to be the most important. Then the service in question could be accessed according to various classification systems, e.g. the Central Product Classification and the list of services prepared for multilateral negotiations in the Group of Negotiations on Services.

The user will be able to ask the database for the regulatory profile of a certain country with respect to a certain service sector. Then the user will be able to ask for further details on measures affecting a specific mode of delivery, as well as the regulatory details on each of these measures. Furthermore, the user will be able to compare the regulatory profiles of various countries with respect to one particular service sector. A glossary will be available as well, providing information on terms that would warrant further explanation.

The database would include details of national legislations of countries as well as those of relevant private bodies where the State has delegated responsibilities of licensing or accreditation to them in certain service professions. It would contain information on entry restrictions, professional qualifications, measures on establishment, and regulations that affect the movement of consumers, among a wide variety of service measures and sectors.

The preparation of the prototype database as well as the design of the software will be completed by October 1993. The active co-operation of individual countries and international organizations will be sought in compiling relevant data. It is hoped that the database will be a major step towards greater transparency regarding the regulatory environment in services and will be very useful in the analysis of the sector, in policy making and in negotiations.

Annex II
Simulated Screens from the Database

Sample Initial Screen

The inner window expands information in the cell (underlined) where the cursor is.

VIEW — Advertising Services

Rep	CPC	GATS	Mode	Meas	Desc	Reg	Src	MA	NT	MFN	Other	Rem
AU	871	1Fa	1	14	X	X	X	X	-	X	-	X
CA	7471	9B	3	35	X	X	X	-	X	-	-	-
US	811	7B	3	82	X	X	X	X	-	-	-	-
GB	862	1Ab	4	31	X	X	X	X	-	-	-	-
AT	812	7A	3	29	X	X	X	-	X	-	-	-
HK	64	9A	3	35	X	X	X	-	X	-	-	-
MY	9312	1Ah	4	33	X	X	X	X	X	-	-	-

F1 Help	F2 Select	F3 Gloss	F4 Enlarge	F5	F6 Details	F7	F8 Print	F9 Rank	F10 Quit

Sample Enlarged Screen for the first line in the initial screen

Country: AUSTRALIA

Sector: ADVERTISING SERVICES

Mode: CROSS BORDER

Measure: LIMITATION ON MARKET SHARE OR QUANTITATIVE RESTRICTIONS

Details: Foreign content of television advertising is restricted to material which is not obtainable in Australia, and is limited to 20 per cent or less of any advertisement unless the foreign material used has been produced by Australians who journeyed to places or events concerned for that purpose. Material produced in New Zealand is excluded from this limitation.

Regulation: Broadcasting Act 1942, Australian Broadcasting Tribunal Standards; Copyright Act 1968; Trade Practices Act.

Source: Australian Traded Services and the Uruguay Round (Park ACT: Dept. of Foreign Affairs and Trade, 1989).

Relevant trade principles: Market Access
Most Favoured Nation Treatment

Remarks: Foreign-owned agencies established in Australia are not affected by this. No limit on the level of foreign ownership in Australian agencies. (Same source)

F1 Help	F2	F3	F4	F5	F6	F7 Search	F8 Print	F9	F10 Quit

Annex III
Sample records from the prototype database

Country	Sector	CPC	GATS	Mode	Measure Type	Detailed Description	Regulation	Source	Remarks
Australia	Advertising Services	871	1 F a	1	Limitation on market share or quantitative restrictions	Foreign content of television advertising is restricted to material which is not obtainable in Australia, and is limited to 20 per cent or less of any advertisement unless the foreign material used has been produced by Australians who journeyed to places or events concerned for that purpose. Material produced in New Zealand is excluded from this limitation.	Broadcasting Act 1942; Australian Broadcasting Tribunal Standards; Copyright Act 1968; Trade Practices Act.	Australian Traded Services and the Uruguay Round (Part ACT: Dept. of Foreign Affairs and Trade, 1989).	Market Access MFN Treatment
Canada	Travel agency and tour operator services	7471	9 B	4	Residence requirements	Travel agents and travel wholesalers must be permanent citizens of Canada. Tourist outfitters and guides in provincial parks: non residents pay a higher fee.	Ontario Travel Industry Act	Provincial legislation	National Treatment
United States	Banking	811, 813	7 B	3	Restrictions on distribution	A foreign bank or its subsidiary not incorporated in the United States cannot open branches in more than one state. Foreign banks with branches in several states before 27 July 1978 were grandfathered. Domestic banks are similarly restricted by the McFadden Act.	International Banking Act	Services of the Commission of EC, Report on US Trade Barriers 1992.	Market Access
United Kingdom	Accounting, Auditing and Bookkeeping services	862	1 A b	4	Local union or association requirements	Appropriate qualifications include membership in ICAEW, ICAS, ICAI or ACCA. In the first three associations membership is open to non-UK nationals on the same basis as for UK nationals. Admission is on the basis of the completion of a training contract with an approved training office and passing the institute's professional examinations. Reciprocal membership arrangements with chartered accountants' associations in Australia, New Zealand and Canada.	Companies Act 1989	ICAEW, Practice Rights in the UK for non-EC nationals	Market Access
Austria	Insurance	812	7 A	3	Other capital-related measures	Branches of foreign insurance companies must deposit a security before doing business. In addition, a further variable deposit is required, if applicable, which is the difference between the fixed minimum deposits and the amount of the deposits, calculated according to the line of business.	Federal law of 18.10.1978, as amended by that of 10.11.1982 and the regulation of the Ministry of Finance of 4.12.1978	City Financial, Insurance Handbook: A Legal Guide for the Insurer and the Reinsurer	Market Access
Hong Kong	Hotel and Restaurant services	64	9 A	3	Residency requirements	Establishment subject to licensing conditions which include residence requirements of the operator.	Not available	National legislation	Market Access
Malaysia	Medical and dental services	9312	1 A h	4	Restrictions on practice	Access allowed only in those geographical areas where there are no Malaysian specialists available locally.	Medical Act 1971	National legislation	Market Access National Treatment